

REMARKS

Claim Rejections

Claims 1-3, 5 and 7-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dyer (6,978,163) in view of Banh et al. (6,526,294) and Yamaguchi et al. (2005/0085276). Claims 19-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dyer in view of Banh et al., and further in Yamaguchi et al., as modified by the Examiner.

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

Claim Amendments

By this Amendment, Applicant has amended claims 1 and 20 of this application and cancelled claim 19. Claim 1 has been amended to include the limitations of cancelled claim 19, while claims 20 has been amended to depend from claim 1. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The amended claims are directed toward: a Bluetooth™ hands-free kit structure in which the structure includes, *inter alia*, a Bluetooth™ hands-free kit structure configured to be capable of ***seamlessly transferring the vocal signals during a phone call*** from being ***outputted by the audio output to being outputted by the Bluetooth™ earphone***, the transfer being triggered by the ***removal of the earphone from the stand***.

Another embodiment is directed toward the above Bluetooth™ hands-free kit structure configured to be capable of ***seamlessly transferring the vocal signals during a phone call*** ***from being outputted by the Bluetooth™ earphone to being outputted by the audio output***, the transfer being triggered by ***docking the earphone with the stand***.

As a preliminary matter, Applicant notes that, since claim 19, has been incorporated by amendment into claim 1, Applicant deems it only necessary to address below the rejection of claim 19 under 35 U.S.C. § 103(a). Applicant further maintains the arguments with regard to Dyer, Banh, and Yamaguchi as contained in the Amendment of August 18, 2006.

On p. 6 of the outstanding Office Action, the Examiner admits, with reference to claims 19-20, that the "cited art does not mention such limitation." As a result, in view of Applicant's amendments to claim 1, only the Examiner's modification of Yamaguchi remains to support the rejection under §103. Namely, the Examiner argues that Yamaguchi can be modified to provide the limitations of claims 19-20. Specifically, On p. 6 of the outstanding Office Action the Examiner argues "however, since Yamaguchi does teach that audio signals outputted by the handset being transferred to the audio output of the stand, wherein the transfer is being trigger only when the handset is docking with the stand (see fig. 16 and page 5 [0084-0089]; therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stand such that audio signals outputted by the headset being transferred to the stand when the headset is docking with the stand for the advantage of allowing the user to conduct **hand-free communication** while recharging both of the handset and headset". *Emphasis added.*

In response, Applicant has reviewed Fig. 16 and [0084]-[0089] of Yamaguchi and concluded that the cited text fails to teach anything about **triggering** a transfer of audio signals from the mobile phone to the stand. Even more importantly, the reference fails to teach or suggest "**seamlessly transferring**" the audio signals during a phone call from being outputted by the stand to being outputted by the phone, or vice versa. To do so requires more than merely noting on p. 6 of the outstanding Office Action the skilled artisan would be motivated to modify Yamaguchi by allowing "the advantage of handsfree communication." Applicant submits that handsfree communication can be achieved by a number of different structures, none of which requires the seamless transfer of audio based on the presence or absence of the phone on the stand. Case law is clear that the Examiner must provide a specific teaching or motivation for modifying from the art and cannot merely assume Applicant's invention.

It follows that Yamaguchi et al. do not teach or suggest a modification resulting in: a Bluetooth™ hands-free kit structure in which the structure including a Bluetooth™ hands-free kit structure configured to be capable of seamlessly transferring the vocal signals during a phone call from being outputted by the audio output to being outputted by the Bluetooth™ earphone, the transfer being triggered by the removal of the earphone from the stand. Nor does the reference teach or suggest a modification resulting in: the above Bluetooth™ hands-free kit structure configured to be capable of seamlessly transferring the vocal signals during a phone call from being outputted by the Bluetooth™ earphone to being outputted by the audio output, the transfer being triggered by docking the earphone with the stand.

In view of the above, it is clear that the cited art does not teach or suggest each and every element of Applicant's claim 19-20 and, thus, cannot now support a rejection of claim 1 (amended to contain the subject matter of claim 19) under 35 U.S.C. § 103.

Furthermore, with regard to motivation to modify Yamaguchi, Applicant submits that there is insufficient pro-offered motivation to motivate the skilled artisan to look to mobile phone **handset** technology for teachings to apply to wireless **headsets**. In addition, the Examiner has not adequately shown that the skilled artisan would look to an entirely different wireless protocol employing technology nearly 20 years old, **conventional mobile phone communication**, as applicable to a headset employing a far more recent technology, **Bluetooth™ communication**.

Applicant respectfully submits that the Examiner is reconstructing Applicant's invention by using Applicant's application as a "blueprint" to selectively cull elements from Dyer, Banh, and Yamaguchi. Furthermore, Applicant asserts that the Examiner's sole source of the motivation to modify Yamaguchi originates from Applicant's disclosure rather than the cited art.

The Examiner is respectfully reminded that in In re Geiger, 815 F.2d 686, 688, 2 USPQ2d, 1276, 1278 (Fed.Cir. 1987) the court stated, at page 1278: "**Obvious to try**" is not a legitimate test of patentability. *Emphasis added*.

Furthermore, in In re Wesslau, 147 U.S.P.Q. 391, 393 (CCPA 1965), the court ruled that "[t]he ever present question in cases within the ambit of 35 U.S.C. 103 is whether the subject matter as a whole would have obvious to one of ordinary

skill in the art following the ***teachings*** of the prior art at the time the invention was made. It is impermissible with the framework of section 103 to **pick and choose** from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” (emphasis in original)

In view of the above, Applicant respectfully submits that, even if the Examiner is able to present references teaching each and every element of Applicant’s claims, the Examiner has still failed to provide a specific motivation from the art sufficient to motivate the skilled artisan to selectively cull certain features from three different references, while ignoring other features inconsistent with Applicant’s invention, to arrive at Applicant’s recited structure. To do so requires more than merely noting on p. 6 of the outstanding Office Action that the skilled artisan would be motivated to modify Yamaguchi by allowing “the advantage of handsfree communication.” As noted above, “obvious to try” is not the applicable standard.

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Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested.

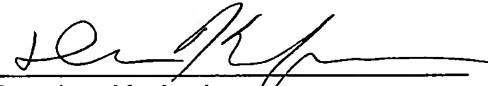
It is not believed that the foregoing amendments to claim 1 requires any further searching and/or consideration on the part of the Examiner, since such amendment merely includes incorporating the language of canceled claim 19 into claim 1 (as well as adjusting the dependancy of claim 20). Thus, the Examiner would have inherently searched this subject matter during the previous consideration of claim 19.

Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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